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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,984	12/15/2003	Gerardo Y. Pablo	S1299.0003 Hart	2112
7590	10/19/2006		EXAMINER	
WAYNE L LOVERCHECK ESQ THE QUINN LAW FIRM 2222 W GRANDVIEW BLVD ERIE, PA 16506-4505			MORGAN JR, JACK HOSMER	
			ART UNIT	PAPER NUMBER
			3782	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/734,984	PABLO, GERARDO Y.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jack H. Morgan	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 8-16 is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                     |                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                         | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                | 5) <input type="checkbox"/> Notice of Informal Patent Application                        |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/15/2003</u> . | 6) <input type="checkbox"/> Other: _____.                                                |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 refers to the holder as being of one-piece construction; however, it is not clear how the lanyard can be the same piece as the remainder of the holder.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto, Shuzo et al. (JP 2002-193260) in view of Thalenfeld (US 4,471,512) and Habibi (US 5,992,715). Goto, Shuzo et al. disclose a beverage bottle holder with a pair of arcuate, pliable ribs (Fig 2, 2) with an opening (2a) to receive a bottle (101) with a curvilinear web portion (4) connected to the base of the ribs, a flat main portion with

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front and rear surfaces. Goto, Shuzo et al. do not disclose a pair of prongs projecting rearwardly from the ribs, or an aperture located at the upper end of the main plate, the aperture having a lanyard passing through it. Thalenfeld discloses a resilient friction clip with a pair of prongs (Fig 2, 14 and 15) which project rearwardly from each rib which are capable of being squeezed together in order to enlarge the opening there between. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the beverage bottle holder of Goto, Shuzo et al. with the prongs of Thalenfeld in order to facilitate the opening of the ribs. Habibi discloses a bottle holder with a main plate (Fig 4, 42) with an aperture (Fig 6, 44). The aperture of Habibi has a lanyard (Fig 7, 46; Col 3, line 12) passing through it in order to attach the bottle to a person. Therefore, it would have been obvious to one of ordinary skill in the art to replace the attachment method (Fig 2, 3') of Goto, Shuzo et al. with the aperture and lanyard of Habibi in order to suspend the bottle holder from a portion of the body.

In regards to claim 2, the combination above discloses the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach company and advertising logos, insignias and slogans to the front and rear surface of the main plate since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on

the substrate may render the device more convenient by providing an individual with a specific type of design or logo does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter and the substrate, which is required for patentability.

In regards to claim 3, the prongs of Thalenfeld, when squeezed together, cause the ribs to separate, facilitating the insertion of an object between them.

In regards to claim 4, the web portion and ribs of Goto, Shuzo et al. space the beverage bottle slightly away from the body.

In regards to claim 5, the combination described above results in an one-piece construction.

In regards to claim 6, Thalenfeld discloses a clip holder as being constructed of plastic (Claim 1). In addition, plastic bottle holders are common in the previous art.

In regards to independent claim 7, the limitations in the claim have been previously disclosed in the combination above.

***Allowable Subject Matter***

Claims 8-16 are allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ayres (US 6,467,654), Cizek (US 6,352,235), Dahl (US PG-Pub 2003/0080165), Longo (US 4,993,611), and Green (US 924,348).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*M. Newhouse*  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER